

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON**

ROYSTON F. MORGAN,

Plaintiff,

v.

SWIFT TRANSPORTATION,

Defendant.

Case No. 3:17-cv-1945-SB

ORDER

Michael H. Simon, District Judge.

United States Magistrate Judge Stacie F. Beckerman issued Findings and Recommendation in this case on March 5, 2019. ECF 26. Magistrate Judge Beckerman recommended that Defendant's motion to dismiss be granted. No party has filed objections.

Under the Federal Magistrates Act ("Act"), the court may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate." 28 U.S.C. § 636(b)(1). If a party files objections to a magistrate judge's findings and recommendations, "the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made." *Id.*; Fed. R. Civ. P. 72(b)(3).

If no party objects, the Act does not prescribe any standard of review. *See Thomas v. Arn*, 474 U.S. 140, 152 (1985) ("There is no indication that Congress, in enacting [the Act],

intended to require a district judge to review a magistrate's report to which no objections are filed."); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc) (holding that the court must review *de novo* magistrate judge's findings and recommendations if objection is made, "but not otherwise").

Although review is not required in the absence of objections, the Act "does not preclude further review by the district judge[] *sua sponte* . . . under a *de novo* or any other standard." *Thomas*, 474 U.S. at 154. Indeed, the Advisory Committee Notes to Fed. R. Civ. P. 72(b) recommend that "[w]hen no timely objection is filed," the court review the magistrate judge's findings and recommendations for "clear error on the face of the record."

No party having made objections, this Court follows the recommendation of the Advisory Committee and reviews Magistrate Judge Beckerman's Findings and Recommendation for clear error on the face of the record. No such error is apparent. Accordingly, the Court **ADOPTS** Magistrate Judge Beckerman's Findings and Recommendation, ECF 26. Plaintiff's motion for appointment of counsel (ECF 25) is **DENIED**. Defendant's motion to dismiss (ECF 21) is **GRANTED**. Plaintiff's claim for discrimination is dismissed with prejudice, meaning that he may not file another complaint alleging this claim. Plaintiff may, however, file a second amended complaint on or before April 30, 2019, if he believes in good faith that he can allege a federal wage claim.

IT IS SO ORDERED.

DATED this 29th day of March, 2019.

/s/ Michael H. Simon
Michael H. Simon
United States District Judge